

Elizabeth Lilburne Widow, and *Elinor Lilburne*, her Eldest Daughter, Petitioners,

AGAINST

WILLIAM CARR Esq; Nephew of the said *Elizabeth*; to Wave his Priviledge.

The CASE.

William *Lilburne* Esq; (Husband of *Elizabeth*, one of the Petitioners) by his last Will and Testament, dated the 17th of January, 1681. gave unto his Wife 600*l.* and did devise unto her his Messuages and Lands in *Sunderland*, in the County of *Durham*, and in *Gunnerton* in *Northumberland*, for her Life; and what those Messuages and Lands, should fall short of 200*l. per annum de Claro*, his Wife should receive out of his Lands, and his Moiety of a Colliery at *Kenton* in *Northumberland*, sufficient to make up the said 200*l. per annum*. And, after his Wife's Death, he gave *Sunderland* and *Gunnerton*-Lands to his Sons *William*, *Robert* and *Benjamin*, in Tail, and then to his own Right Heirs. He gave also to his Daughters *Elinor* (the other Petitioner), *Jane*, and *Elizabeth*, 700*l.* apiece; *Alice*, *Mary*, and *Isabel* 500*l.* apiece, and to *Anne* 400*l.* to be paid them at their Age of Twenty one Years, or Days of Marriage; and charged his Lands and Colliery at *Kenton* with the Payment of those Portions; And, in the mean time, allow'd them Interest: And gave his Estate at *Kenton* to his three Sons, and made his Wife sole Executrix, and gave her the sole Tuition of all her Children, and allow'd her what she thought fitting, out of their Use-Money, for their Maintenance, as by the Will more fully appears, and shortly after dy'd, leaving all his Children very young, under one and twenty.

The Colliery at *Kenton* is above 200*l. per annum*, and the Lands at *Kenton* 200*l. per annum* more.

William Lilburne left several Mortgages upon his Estate.

Elizabeth proved the Will, and, in managing the Lands and Colliery at *Kenton*, and in bringing up her Ten Children, she hath necessarily engaged her self and her own Estate in several great Debts and Mortgages.

Benjamin Lilburne is dead, and *Sunderland* and *Gunnerton* Lands fall short of 200*l. per annum*, at least 80*l. per annum*.

The Petitioners *Elizabeth* and *Elinor*, with *William* the Son, *Jane* and *Elizabeth* the Daughters, did, by Indenture, dated the 1st of August 1691. lease the Colliery to Mr. *Carr*, for 21 Years, under the yearly Rent of 210*l.* payable to *Elizabeth*, and *William*; on the Back of which Lease is indorsed an Agreement, That the Rent should be paid to the same Uses as in the Will, or to that effect. Mr. *Carr*, shortly after, assign'd this Lease to Sir *William Blackett*; who paid the Rent to Mr. *Carr*, or his Order.

Mr. *Carr* has since also got into Possession of the Lands at *Kenton*, from and under the Sons; but whether ~~he has received any~~ upon any Consideration, the Petitioners know not, but hope that ~~he~~ will avail, Mr. *Carr* claiming nothing but from the Sons, and under the Trusts in the Will; and knowing the Sons to be by the Will only Trustees to pay Debts and raise the Daughters Portions.

The Mother having a Charge of above 2000*l.* upon the *Kenton* Lands and Colliery, by reason of long and chargable Suits, both in Law and in *Chancery*, in Defence of her Husband's Title, and also by reason of winning the Colliery, maintaining Ten Children, paying her Husband's Debts, and making up her Jointure-Lands 200*l. per annum* (which Jointure-Lands she mortgaged upon her Son's account, and they are now recovered from her) the Mother, having this Charge and Demand upon the Estate, preferr'd her Bill in *Chancery*, in *Michaelmas Term*, 1694. against the Sons, Sir *William Blackett*, Mr. *Carr*, the Daughters, and others, To have the Lands and Colliery at *Kenton* sold, to pay off Debts, and raise the Daughters Portions, and to have an Account of the Mesne Profits.

The Mother having never received but One Year's Rent for the Colliery, and nothing at all out of the *Kenton* Lands; and the Petitioner *Elinor* having neither received one Penny of her Portion, nor any Interest: And the Mother's Goods, and Joyniture-Lands are taken from her for Debts contracted in her Sons Minority, and for them: And both Mother and Daughter, the now Petitioners, have been close Prisoners in Execution, in *New-Castle* Goal, above 18 Months, for 400*l.* at Suit of Mrs. *Carr*, who is Mother of Mr. *Carr*, and own Sister to the Petitioner *Elizabeth*.

The Petitioners have no way to pay this or any other Debt, but by Sale of *Kenton* Lands and Colliery, and must otherwise starve in Prison. The Petitioners say Mr. *Carr* has by his own confession above 1300*l.* in his hands, having been in possession of both Lands and Colliery, and they are willing that his Mother's Debt be paid out of it, or out of what Sums the *Chancery* shall decree to either of them.

One Mr. *Geo. Cuthbertson* hath received the Profits of the Estate from *August 1695*. having a Demand upon the Estate of 800*l.* prior to Mr. *Lilburne*'s Will, and now is almost paid off, and is also a Party to the Bill in *Chancery*.

Sir *William Blackett* did upon Application to him fairly and honourably wave his Privilege, and put in his Answer in *Chancery*, Confessing the several Trusts and Deviles before mentioned; yet Mr. *Carr* by insisting upon his Privilege, or by Delays hath hitherto (which is above Two Years) refused or delayed to put in his Answer.

It cannot be imagined, What pretence Mr. *Carr* can have why the Petitioner *Elinor* should neither have her 700*l.* Portion, nor Interest; and why the Mother should not be paid what is really, and *bona fide* due to her upon a fair Account. To pay all which Debts and Portions, the Sons are only Trustees, and Mr. *Carr* being so near a Relation, was always privy to those Trusts, and doth claim nothing but under, and subject to those Trusts.

Therefore the Petitioners being in great Misery in New-Castle Goal, humbly pray this Honourable House, That Mr. Carr may be ordered to wave his Privilege.



Mrs. *Lilburne*, and her
Daughter, Petitioners,
against *William Carr Esq.*,
her Nephew.

The Case of the Petitioners.

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